

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CYNTHIA L. MERLINI,

Plaintiff,

vs.

CANADA,

Defendant

Civ. A. No. 1:17-cv-10519-NMG

PLAINTIFF'S MOTION FOR AN ORDER DIRECTING ISSUANCE OF SUMMONS

Pursuant to Fed. R. Civ. P. 4(b), the plaintiff, Cynthia L. Merlini, moves for an order directing the Clerk's Office to issue a summons in the form attached to this Motion as Exhibit 1. In support of this motion, the plaintiff states as follows:

1. The defendant in this case, Canada, is a foreign sovereign. Under the Foreign Sovereign Immunities Act, it has sixty days, rather than the ordinary twenty-one days, to answer the complaint. *See* 28 U.S.C. § 1608(d) (foreign state "shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made").

2. The summons the Clerk's Office issued as a matter of course in this case (ECF No. 3) is the ordinary twenty-one day summons.

3. A summons that misstates the time for an answer is subject to a motion to dismiss under Fed. R. Civ. P. 12(b)(4). Moreover, the plaintiff is required to serve process in this case via the Hague Service Convention. *See* 28 U.S.C. § 1608(a)(2). There are instances in which foreign central authorities that receive requests for service of U.S. summonses that misstate the time for an answer refuse to execute requests for service under the Convention. *See, e.g.*, 1 *International*

Aspects of U.S. Litigation: A Practitioner's Deskbook 195 n.19 (James Berger, Ed. 2017). The purpose of this motion is to avoid such potential procedural difficulties.

4. Under Fed. R. Civ. P. 4(b), the plaintiff "may present a summons to the clerk for signature and seal," and "if the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff ..."

5. The undersigned has requested issuance of a sixty-day summons from the Clerk's Office. However, the Clerk's Office has indicated that it has no procedure for issuance of a sixty-day summons or for submission of summonses by plaintiffs in FSIA cases, thus necessitating this motion.

For these reasons, the plaintiff respectfully requests that the Court direct the Clerk's Office to issue the proposed summons.

Respectfully submitted,

CYNTHIA L. MERLINI

By her attorney:

/s/ Theodore J. Folkman

Theodore J. Folkman (BBO No. 647642)
MURPHY & KING, P.C.
One Beacon St.
Boston, Mass. 02108
(617) 423-0400
tfolkman@murphyking.com

Dated: March 28, 2017
724397